

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EVEREST REINSURANCE COMPANY,
AS SUCCESSOR IN INTEREST TO NEW
HAMPSHIRE INSURANCE COMPANY AND
SUBROGEE OF EDWARD AND FRANK MARCIANO,

MEMORANDUM AND ORDER

Plaintiff,

09-CV-5607 (KAM) (JMA)

-against-

PRBK, LLC

Defendant.

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MATSUMOTO, United States District Judge:

Plaintiff Everest Reinsurance Company ("plaintiff"), as successor in interest to New Hampshire Insurance Company, brought this negligence action against defaulting defendant PRBK, LLC ("defendant"), alleging that damage sustained by property owned by Edward and Frank Marciano and insured by New Hampshire Insurance Company was caused by negligent excavation work performed by defendant on the property adjacent to the Marcianos'. (*See generally* ECF No. 1, Compl.) The Marcianos reached a settlement on their claim with New Hampshire Insurance Company, and plaintiff seeks reimbursement from the defendant of the insurance settlement, interest, and costs. Presently before the court is a Report and Recommendation ("R&R") issued by Magistrate Judge Azrack on December 9, 2010, recommending that this court enter a default judgment against defendant in the amount of \$523,690.88. (ECF No. 14, R&R, at 1-2.)

Notice of the Report and Recommendation was sent

electronically to the parties appearing in the docket via the court's electronic filing system on December 10, 2010. The Report and Recommendation directed counsel for the plaintiff to serve a copy of the Report and Recommendation by certified mail on defendant and to promptly file a declaration of service with the court. (*Id.* at 7.) On December 15, 2010, plaintiff's counsel filed a declaration indicating service of the Report and Recommendation upon defendant by certified mail, return receipt requested, on December 15, 2010. (ECF No. 15, Decl. of Service, dated Dec. 15, 2010.)

As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within fourteen days of receipt of the report. (ECF No. 14, R&R, at 7.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Azrack's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189

(S.D.N.Y. 1985).

Upon a review of the Report and Recommendation, and considering that the parties have failed to object to any of Magistrate Judge Azrack's thorough and well-reasoned recommendations, the court finds no clear error in Magistrate Judge Azrack's Report and Recommendation and hereby affirms and adopts the Report and Recommendation as the opinion of the court.

Counsel for plaintiff shall serve a copy of this Memorandum and Order upon defendant and file a declaration of service by January 5, 2011. The Clerk of the Court is respectfully directed to enter a default judgment against defendant in the amount of \$523,690.88 and to close the case.

SO ORDERED.

Dated: January 4, 2011
Brooklyn, New York

/s/
Kiyo A. Matsumoto
United States District Judge